

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 259 Capital Felonies
SPONSOR(S): Criminal & Civil Justice Policy Council; Weinstein and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 704

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	12 Y, 0 N	Kramer	Cunningham
2)	Criminal & Civil Justice Appropriations Committee	13 Y, 0 N	McAuliffe	Davis
3)	Criminal & Civil Justice Policy Council	15 Y, 0 N, As CS	Cunningham	Havlicak
4)				
5)				

SUMMARY ANALYSIS

When a defendant is convicted of capital murder, a separate sentencing proceeding is conducted before the trial jury to determine whether the defendant should be sentenced to death or to life imprisonment. After hearing evidence, the jury renders an advisory sentence to the judge based on whether sufficient aggravating circumstances exist, whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances; and based on these considerations, whether the defendant should be sentenced to life imprisonment or death. The judge is not required to sentence a defendant as recommended by the jury. If the judge sentences a person to death, the judge must make written findings that there are sufficient aggravating circumstances and insufficient mitigating circumstances to outweigh the aggravating circumstances.

The bill adds to the list of aggravating circumstances that can be considered by the jury and judge in the sentencing phase of a capital case that the capital felony was committed by a person subject to an injunction for protection against domestic violence, repeat violence, sexual violence or dating violence, or a foreign domestic violence injunction, and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.

The Criminal Justice Impact Conference met February 23, 2010, and found the bill would have no prison bed impact.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Capital sentencing

Section 921.141, F.S., is Florida's death penalty statute. When a defendant is convicted of capital murder, a separate sentencing proceeding is conducted before the trial jury to determine whether the defendant should be sentenced to death or to life imprisonment.¹ After hearing evidence, the jury renders an advisory sentence to the judge based on the following factors:

- Whether sufficient aggravating circumstances exist;
- Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and
- Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.²

The judge is not required to sentence a defendant as recommended by the jury. If the judge sentences a person to death, the judge must make written findings that there are sufficient aggravating circumstances and insufficient mitigating circumstances to outweigh the aggravating circumstances.³

The aggravating factors that may be considered are limited by statute. Section 921.141(5), F.S., provides:

(5) AGGRAVATING CIRCUMSTANCES.--Aggravating circumstances shall be limited to the following:

- The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation.
- The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.
- The defendant knowingly created a great risk of death to many persons.

¹ s. 921.141(1), F.S.

² s. 921.141(2), F.S.

³ s. 921.141(3), F.S.

- The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any: robbery; sexual battery; aggravated child abuse; abuse of an elderly person or disabled adult resulting in great bodily harm, permanent disability, or permanent disfigurement; arson; burglary; kidnapping; aircraft piracy; or unlawful throwing, placing, or discharging of a destructive device or bomb.
- The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
- The capital felony was committed for pecuniary gain.
- The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
- The capital felony was especially heinous, atrocious, or cruel.
- The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.
- The victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties.
- The victim of the capital felony was an elected or appointed public official engaged in the performance of his or her official duties if the motive for the capital felony was related, in whole or in part, to the victim's official capacity.
- The victim of the capital felony was a person less than 12 years of age.
- The victim of the capital felony was particularly vulnerable due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.
- The capital felony was committed by a criminal gang member, as defined in s. 874.03, F.S.
- The capital felony was committed by a person designated as a sexual predator pursuant to s. 775.21, F.S., or a person previously designated as a sexual predator who had the sexual predator designation removed.

Mitigating factors are not limited by statute but may include:

- The defendant has no significant history of prior criminal activity.
- The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.
- The victim was a participant in the defendant's conduct or consented to the act.
- The defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.
- The defendant acted under extreme duress or under the substantial domination of another person.
- The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.

- The age of the defendant at the time of the crime.
- The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.⁴

Protective injunctions

Section 741.30, F.S., provides criteria for the issuance by a judge of an injunction for protection against domestic violence⁵ upon the filing of a petition by the victim. When it appears to the court that an immediate and present danger of violence exists, the court may issue a temporary injunction which may be granted without the respondent being present.⁶ The temporary injunction is effective for not more than 15 days unless the judge finds that there is good cause to continue the injunction. A full hearing must be held before the temporary injunction expires. Any final injunction issued after the full hearing remains in effect until it is modified or dissolved by the judge.⁷

Section 741.315, F.S. provides that an injunction for protection against domestic violence issued by a court of a foreign state must be accorded full faith and credit by the courts of this state and enforced by a law enforcement agency as if it were the order of a Florida court.

Section 784.046, F.S., provides criteria for the issuance by a judge of an injunction for protection against repeat violence,⁸ sexual violence⁹ or dating violence¹⁰ upon the filing of a petition by the victim. When it appears to the court that an immediate and present danger of violence exists, the court may issue a temporary injunction which may be granted without the respondent being present.¹¹ The temporary injunction is effective for not more than 15 days unless the judge finds that there is good cause to continue the injunction. A full hearing must be held before the temporary injunction expires. Any final injunction issued after the full hearing remains in effect until it is modified or dissolved by the judge.¹²

Effect of the bill

The bill amends s. 921.141, F.S. to include an additional aggravating circumstance that can be considered by the jury and judge in the sentencing phase of a capital case when the capital felony was

⁴ s. 91.141(6), F.S.

⁵ "Domestic violence" is defined to mean any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. See s. 741.28, F.S.

⁶ s. 741.30(5), F.S.

⁷ s. 741.30(6)(c), F.S.

⁸ "Repeat violence" is defined to mean two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member.

⁹ Sexual violence" is defined to mean any one incident of:

1. Sexual battery, as defined in chapter 794, F.S.;
2. A lewd or lascivious act, as defined in chapter 800, F.S., committed upon or in the presence of a person younger than 16 years of age;
3. Luring or enticing a child, as described in chapter 787, F.S.;
4. Sexual performance by a child, as described in chapter 827, F.S.; or
5. Any other forcible felony wherein a sexual act is committed or attempted, regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

¹⁰ "Dating violence" is defined to mean violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on the consideration of the following factors:

1. A dating relationship must have existed within the past 6 months;
2. The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
3. The frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.

The term does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context.

¹¹ s. 784.046(6), F.S.

¹² s. 784.046(7)(c), F.S.

committed by a person subject to an injunction issued pursuant to s. 741.30, F.S., s. 784.046, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.

B. SECTION DIRECTORY:

Section 1. Amends s. 921.141, F.S. relating to sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.

Section 2. Provides effective date of October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The State Attorneys have reported that the additional aggravating factor created by the bill would not create any significant workload or constitutional issue of concern. Similarly, according to the Office of the State Court Administrator, such workload increases will likely be minimal. The Public Defenders, however, state the bill would have an indeterminate impact on their workload.

The Criminal Justice Impact Conference met on February 23, 2010, and found the bill would have no prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 16, 2010, the Criminal & Civil Justice Policy Council adopted a strike-all amendment to the bill. The strike-all amendment adds an aggravating factor to the death penalty statute when the capital felony was committed by a person subject to an injunction issued pursuant to s. 741.30, F.S., s. 784.046, F.S., and foreign protection orders accorded full faith and credit pursuant to s. 741.315, and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner. The strike-all amendment also changes the effective date of the bill from July 1, 2010 to October 1, 2010.

The bill was reported favorably as a council substitute. This analysis reflects the council substitute.